

REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 1-87 are presently active in this case. The foregoing amendment amends Claims 1, 2, 12, 14, 19, 20, 22 and 29 to address matters of form and adds new Claims 30-87. No new matter is added.

By way of summary, the outstanding Office Action presents the following issues: Claims 1-29 were objected to for informalities in wording; Claims 2 and 12-29 were rejected under 35 U.S.C. § 112, second paragraph, as being incomplete for omitting structural relationships of elements; Claims 1, 9 and 12 were rejected under 35 U.S.C. § 102(b) as being anticipated by Hamouda et al. (U.S. Patent No. 5,749,259, hereafter “Hamouda”); Claim 2 was rejected under 35 U.S.C. § 103(a) as being obvious over Hamouda in view of Kurz et al. (U.S. Patent No. 5,979,235, hereafter “Kurz”); and Claims 3-5 and 13 were rejected as being obvious over Hamouda. Claims 6-8, 10 and 11 were indicated as reciting allowable subject matter.

Applicants acknowledge with appreciation the indication that Claims 6-8, 10 and 11 are allowable.

Regarding the objection to Claims 1-29 and the rejection of Claims 2 and 12-29 for matters of form, Claims 1, 2, 12, 14, 19, 20, 22, and 29 have been amended to more clearly point out the matter claimed as Applicants’ invention. Therefore, Applicants respectfully request the rejection under 35 U.S.C. § 112, second paragraph be removed.

Claims 1, 9, and 12 were rejected under 35 U.S.C. § 102(b) as being anticipated by Hamouda. Applicants respectfully traverse that rejection.

In an exemplary embodiment of Applicants’ invention, an apparatus for measuring the breathability and comfort level of a shoe is provided. Claim 1 recites, in part, “a rigid

structure made of self-supporting heat conducting material that duplicates a contour of a foot for supporting a shoe to be tested.” The rigid structure, for example, is shown in Figures 2, 3, 4, and 5.

In contrast, Hamouda provides a sweating hot plate apparatus for simulating the thermal regulatory behavior of human skin and for predicting the comfort level of fabric tested with the apparatus. Hamouda describes a testing device in which fabric is placed on the top surface of the device, selected inputs of power and water are supplied to the device, and temperature is measured across the top surface of the device in order to compare the changing temperature of the top surface to the actual change in temperature of human skin. The purpose of the device is to determine the comfort level of the fabric when the fabric is used to cover human skin.<sup>1</sup> Hamouda does not disclose any device or apparatus that duplicates the contour of a human foot. Nor does Hamouda disclose anything for supporting a shoe. Rather, the device described in Hamouda is a flat plate upon which pieces of fabric are tested.

Additionally, Claim 1 recites, in part, a rigid structure “divided into at least three rigid structure regions that are thermally insulated from each other.” As this language describes, “a rigid structure made of self-supporting heat-conducting material that duplicates a contour of a foot,” the three thermally insulated regions must combine to form a shape similar to the contour of a foot. The three regions described in Hamouda, in contrast, are completely flat as is evident in Figures 1a, 1b and 1c. Therefore, Hamouda does not disclose a rigid structure with at least three regions that duplicate a contour of a foot as recited in Claim 1.

Additionally, Claim 1 recites, in part, “at least one cladding surrounding said rigid structure, said cladding .... made of a soft material whose structure is permeable to liquids ....” Hamouda does not disclose cladding for surrounding the rigid structure. Rather,

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<sup>1</sup> See Hamouda, Abstract and column 3, lines 5-50.

Hamouda discloses a flat plate covered with a sintered permeable material such as stainless steel.<sup>2</sup> The apparatus described in Hamouda is then applied to fabrics. That is, the device is used to test the comfort level of various fabrics as part of a selection process. The device itself has no cladding made of a soft material whose structure is permeable to liquids.

Therefore, Hamouda lacks yet another element recited in Claim 1. Accordingly, Applicants respectfully submit that Claim 1 is patentably distinguished over Hamouda for at least the reasons discussed above, and respectfully request that the rejection under 35 U.S.C. § 102(b) of Claim 1, and Claims 9 and 12 which depend from Claim 1, be withdrawn.

Regarding the rejections under 35 U.S.C. § 103(a), Applicants respectfully note that the Examiner relies primarily on Hamouda and relies on Kurz only to provide elements of dependent claims. As Kurz does not disclose a rigid structure duplicating the contour of a foot divided into at least three regions thermally insulated from each other and does not disclose cladding for surrounding the rigid structure made of a soft material whose structure is permeable to liquids, Applicants respectfully submit that Kurz does not remedy the deficiencies in Hamouda. Therefore, Applicants respectfully request the rejections under 35 U.S.C. § 103(a) be withdrawn.

Newly added independent Claim 30 is a combination of all the limitations of Claims 1, 4 and 6. Newly added dependent Claims 31-56 contain all the elements of Claims 2-29 with the exception of Claims 4 and 6. Newly added independent Claim 57 contains all the limitations of Claims 1 and 7; newly added independent Claim 58 contains all the limitations of Claims 1 and 8; and newly added independent Claim 59 contains all the limitations of Claims 1 and 11. Newly added independent Claim 60 contains all of the limitations of Claims 1 and 14, and newly added Claims 61-87 which depend from Claim 60 contain all the

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<sup>2</sup> Hamouda, Column 5, lines 22-35.

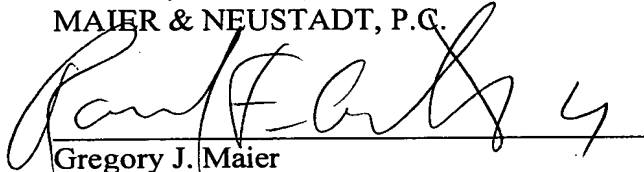
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limitations of Claims 2-13 and 15-29. Therefore, Applicants respectfully submit that no new matter is added.

Consequently, in view of the foregoing discussion and present amendments, it is respectfully submitted that this application is in condition for allowance. An early and favorable action is therefore respectfully requested.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Gregory J. Maier", is written over a horizontal line.

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